

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

ARCHBISHOP JOCITA C. WILLIAMS,
PHD.D.D.;

Plaintiff,

vs.

LAND AMERICA LAWYERS TITLE,
DOES; et al.,

Defendants.

8:12CV433

DISMISSAL ORDER

This matter is before the court on plaintiff's objections, [Filing No. 20](#), to the report and recommendation of the magistrate judge, [Filing No. 19](#). The magistrate judge recommended that the plaintiff's amended complaint, [Filing No. 9](#), be dismissed without prejudice pursuant to Fed. R. Civ. P. 4(m) and 37. Pro se plaintiff filed this case alleging a civil rights violation on the basis of race and gender involving an alleged mortgage fraud, apparently in the State of Colorado.

Plaintiff filed this lawsuit on December 19, 2012. In March of 2013, plaintiff asked for permission to amend her complaint, which the magistrate judge granted, and she filed the same on June 11, 2013. [Filing Nos. 7](#) and [9](#). The court then dismissed some of the defendants and moved forward with five of the defendants. [Filing No. 10](#). The Clerk of Court then gave plaintiff the appropriate forms and summonses. Plaintiff did not serve the defendants in this case, and as a result, the magistrate judge issued an order on December 24, 2013, to show cause as to why her case should not be dismissed pursuant to NECivR 41.2 for failure to prosecute. [Filing No. 12](#). Plaintiff asked for additional time to serve the defendants, [Filing No. 13](#), which the magistrate judge permitted. [Filing No. 14](#).

Thereafter, the plaintiff sent some of summonses to the defendants, but two of them were returned as they contained no address. [Filing No. 15](#). The three others were also returned unexecuted. See Filing Nos. 16-18. The U.S. Marshal's office stated that plaintiff did not remedy the deficiencies so as to permit service. The plaintiff has filed nothing since that time. No defendant has been served, and this case has been pending for two years.

Plaintiff objects to the magistrate judge's recommendation that this case be dismissed. Plaintiff cites a plethora of law, generally not addressing the ruling of the magistrate judge. She also contends that she was involved in a car accident in January 2014, requiring a surgery in February 2014, and some resulting physical therapy, and she suffers from diabetes. She attaches a letter from a law firm addressed to another court in support of her claims. [Filing No. 20-1](#). However, the plaintiff has not alleged any ailments or physical injuries that would prohibit her from pursuing this lawsuit.

The magistrate judge determined, and this court agrees, dismissal without prejudice is appropriate when service is not effectuated within 120 days of the filing of the complaint. See [Fed. R. Civ. P. 4\(m\)](#); [Bullock v. United States](#), 160 F.3d 441, 442 (8th Cir. 1998) (*per curiam*) (affirming district court's dismissal without prejudice under Rule 4(m)); see also [Carmona v. Ross](#), 376 F.3d 829, 830 (8th Cir. 2004) (dismissal affirmed where plaintiff given opportunity, failed to cure defect); see also NECivR 41.2 "At any time, a case not being prosecuted with reasonable diligence may be dismissed for lack of prosecution." The court agrees that the magistrate judge extended the 120-day deadline an additional 90 days. The deadline has long expired, and plaintiff has failed to serve any of the defendants. Regardless of plaintiff's January 14th automobile

accident, this case has been active for nearly two years and no service has been effectuated. In that same regard, plaintiff has failed to comply with court orders regarding service on these defendants. For these reasons, and as stated in the order of the magistrate judge, the court finds it is appropriate to dismiss this case without prejudice.

THEREFORE, IT IS ORDERED:

1. The order of the magistrate judge, [Filing No. 19](#), is adopted in its entirety.
2. The objections of the plaintiff, [Filing No. 20](#), are overruled.
3. This case is dismissed without prejudice.

Dated this 26th day of August, 2014.

BY THE COURT:

s/ Joseph F. Bataillon
United States District Judge